

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

SABRI BENKAHLA,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 2:09-CV-00025-WTL-DML
)	
FEDERAL BUREAU OF PRISONS,)	
)	
Defendant.)	

**DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

The Defendant, by counsel, respectfully request that the Court dismiss this cause of action, pursuant to *Fed. R. Civ. P.* 12(b)(1), for the reason that the Administrative Procedures Act, 5 U.S.C. § 551, *et seq.*, does not apply to these claims, there has been no waiver of sovereign immunity regarding the claims made by Plaintiff against the Federal Bureau of Prisons, and this Court lacks subject matter jurisdiction over the United States.

A brief in support of this motion is attached hereto and incorporated herein by this reference.

WHEREFORE the Defendant respectfully request that this cause of action be dismissed, alternatively, judgment should enter in favor of the United States on Plaintiff's claims, and for all other relief just and proper in the premises.

Respectfully submitted,

TIMOTHY M. MORRISON
United States Attorney

By: /s/ Thomas E. Kieper
Thomas E. Kieper
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2009, a copy of the foregoing **DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

David M. Shapiro
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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

NONE.

/s/ *Thomas E. Kieper*

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